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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,147	03/28/2001	Eugene S. Dudash	LEAR 0847 PUS (2003 US)	3972

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EXAMINER	
COZART, JERMIE E	
ART UNIT	**PAPER NUMBER**
3726	//

DATE MAILED: 05/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/820,147	Applicant(s) DUDASH ET AL.	
	Examiner Jermie Cozart	Art Unit 3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 February 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *13-21* is/are pending in the application.

4a) Of the above claim(s) *19-21* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *13-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Loper et al.

AAPA discloses that it is known to provide openings in the back frame tube and secure the tubes therein by welding.

AAPA, however, does not disclose swaging the guide tube to form a swaged portion engaged with the seat back frame to thereby secure the guide tube to the seat back frame, swaging the guide tube to form an additional swaged portion on the guide tube wherein the additional swaged portion cooperates with the swaged portion to secure the guide tube to the seat back frame, the step of swaging the guide tube to form an additional swaged portion is performed prior to the step of inserting the guide tube into the aperture. AAPA also does not disclose forming a first radially extending swaged portion on the guide tube, forming a second radially extending swaged portion on the guide tube such that the flat portion extends between the swaged portions, such that the swaged portions abut the flat portions to thereby secure the guide tube to the seat back frame.

Loper discloses swaging a guide tube (13) to form a swaged portion (19) engaged with a frame (10) to thereby secure the guide tube (13) to the frame (10), swaging the guide tube (13) to form an additional swaged portion (14) on the guide tube wherein the additional swaged portion (14) cooperates with the swaged portion (19) to secure the guide tube (13) to the frame (10), the step of swaging the guide tube to form an additional swaged portion (14) is performed prior to the step of inserting the guide tube into the aperture. Loper also discloses forming a first radially extending swaged portion (14) on the guide tube (13), forming a second radially extending swaged portion (19) on the guide tube such that a flat portion extends between the swaged portions (14, 19), such that the swaged portions abut the flat portions to thereby secure the guide tube (13) to the frame (10).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to attach the guide tubes of AAPA to the frame by swaging instead of welding, in light of the teachings of Loper, in order to more securably retain the guide tube within the aperture of the frame.

Response to Arguments

3. Applicant's arguments filed 2/8/02 have been fully considered but they are not persuasive.

Applicant argues that Loper et al. `539 is not directed to the problem of attaching a headrest guide tube to a seat back frame.

In response to applicant's argument that Loper et al.`539 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's

endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Loper et al. `539 is directed to the process of swaging a guide tube onto a frame, wherein the guide tube has been inserted into the aperture of the frame so as to securably attach the members to one another.

Applicant argues that there is no motivation for combining this reference (Loper et al. `539) with AAPA.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, AAPA discloses all of the claimed limitations except for attaching the headrest support guide tube to the seat back frame by swaging. Loper et al.`539 discloses swaging a guide tube onto a frame, wherein the guide tube has been inserted into the aperture of the frame so as to securably attach the members to one another. Therefore, the combination of references as cited renders the claimed invention to obvious. Moreover, the law does not require that the references be combined for the reasons contemplated by the inventors as long as some motivation or suggestion to combine them is provided, as is

the case here, by the prior art taken as a whole. *In re Beattie, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1922).*

Applicant also argue that the combination is improper, and that it is improper to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

6. If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, or fax (703) 872-9301 or by email to CustomerService3700@uspto.gov.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermie Cozart whose telephone number is 703-305-0126. The examiner can normally be reached on Monday-Thursday, 7:30 am - 6:00 pm.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for

the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 308-6789 or (888) 786-0101
Assignment Branch	(703) 308-9723
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Petitions/Special Programs	(703) 305-9285
Terminal Disclaimers	(703) 305-8408
PCT Help Desk	(703) 305-3257

If the information desired is not provided above, or a number has been changed, please call the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http: www.uspto.gov

DAVID P. BRYANT
PRIMARY EXAMINER

JC
May 6, 2002